

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 813 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

KHANT KADA NATHA

Appearance:

Mr.D.N. Patel, ADDl. PUBLIC PROSECUTOR for
appellant

MR MAHENDRA K PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 24/08/98

ORAL JUDGEMENT

State has preferred this appeal against the order of acquittal recorded by Judicial Magistrate First Class, Junagadh on 21.6.90 in Criminal Case No. 4730/86 wherein the accused were tried for offences punishable under sections 323, 324 read with section 114 of the Indian Penal Code.

2. Short facts of the case are as under:-

2.1 On 10.9.1985 at about 4.00 p.m. at village Moti Khodiyar, two accused persons, after abusing, delivered blows by means of an axe to three persons. After investigation, police filed charge sheet against the accused persons. The accused pleaded that they are entirely innocent. On appreciation of evidence, the trial Court came to the conclusion that the prosecution has failed to prove the case beyond reasonable doubt. The trial Court further held that their theory put forward by the accused is probable, more particularly in view of the dispute between the two parties.

3. It is required to be noted that the accused side and the complainant side are relatives. The prosecution case is that blows were delivered by means of an axe. However, the evidence is not cogent and convincing about the use of weapon, and therefore, the benefit of doubt given to the accused is not required to be interfered lightly. Mr. Patel, learned Additional Public Prosecutor could not point out from evidence as to which side of the axe was used for inflicting the injuries. Medical evidence indicates that a hard and blunt substance was used for inflicting the injuries. Therefore, it is difficult to say with certainty that blows were inflicted by means of an axe. The trial Court has further held that evidence of eye witnesses is not supported by medical evidence. Though it is not necessary that in all cases there must be corroboration, the learned Magistrate in the instant case, after scrutiny, has held that there is no corroboration at least from an independent source. The prosecution has failed to produce before the Court an independent witness. It is difficult to say that the reasonings given by the trial Court are improper or that the view taken by the learned trial Judge could not have been taken on the evidence on record, and therefore, the same is required to be interfered with. It is required to be noted that all the witnesses examined were close relatives of injured.

4. Moreover, this is an appeal against an order of acquittal. The Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which the acquittal was founded and to reach to a conclusion that the order of acquittal should

be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1). the view of the trial judge as to the credibility of the witnesses; (2). the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3). the right of the accused to the benefit of any doubt, and, (4). the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses (See AIR 1934 PC 227).

5. Having heard the advocates and gone through the evidence, this Court is in agreement with the views taken and findings arrived at by the learned Magistrate. This Court is, therefore, not discussing the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417, which reads as under:-

" This Court has observed in *Girija Nandini Devi v. Bigendra Nandini Choudry* (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice"

In the result, this appeal fails and stands dismissed.

csm./ -----